IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10986 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHARATKUMAR G BHATT

Versus

KHANT KALU MOTI,SINCE DECEASEDTHROUGH HIS HEIRS & L.R.

Appearance:

1. Special Civil Application No. 10986 of 1993

MR MUKUND M DESAI for Petitioner No. 1

..... for Respondent No. 1

RULE SERVED for Respondent No. 1/1-2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 31/03/2004

ORAL JUDGEMENT

The present Special Civil Application is filed under Article 227 of the Constitution of India challenging the judgment and order passed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, dated 21.10.1992/25.3.1993 in Revision

Application No. 3 of 1991 in dismissing the same and confirming the order passed by the Deputy Collector, Godhra dated passed by the learned Special Secretary (Appeals), Revenue Department, State of Gujarat, dated 21.10.1992/25.3.1993 declaring mortgage as illegal and by further directing to hand over possession of the land in question to the original owner for breach of provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act (hereinafter referred to as 'the Act').

2. That land bearing Survey No. 54/4 admeasuring 1 acre and 23 gunthas of land situate at Village Vanka of Lunawada taluka, District-Panchmahals was in name of Kalubhai Motibhai Khant, respondent No.1 herein and the same was declared to be a fragment land for which necessary entry No. 96 dated 10th April 1967 was also made. Thus it was found that the said fragment land was mortgaged to one Bharatkumar Ganpatram Bhatt, petitioner herein. It was found that there is a breach of provisions of the Act and therefore proceedings were initiated and a show cause notice was issued against the petitioner to show cause why proceedings under Section 9(1)(2)(3) of the Act should not be initiated and though proceedings were initiated in the year 1983 hearing was concluded in the year 1990-91 and even on the last date of hearing,i.e. on 18.3.1991 also nobody remained present on behalf of the petitioner as well as respondent and therefore the proceedings were held ex-parte. It was found by Deputy Collector,Godhra that name of one Mulshankar Motiram was entered into the Record of Rights vide entry No. 103 dated 1.11.1968 as joint holder which was entered into wrongly and on the basis of the aforesaid entry half portion of the land was in possession of Mulshankar Motiram and the remaining land came to be continued in the name of Kalubhai Motibhai respondent No.1 herein. The Deputy Collector has also found that the aforesaid land in question was sold by Kalubhai Motibhai for which there is no entry and subsequently it was found that by an unregistered mortgage deed dated 30th March 1982 the land in question was mortgaged to the petitioner and therefore there will be a fragment even with regard to half portion of the land Survey No. 54/4 and therefore the Deputy Collector, Godhra, vide judgment and order dated 25.6.1991 declaring mortgage deed as illegal under the provisions of Section 9(1) of the Act and imposed a penalty of Rs. 250 under Section 9(2) of the Act and further passed an order under Section 9(3) of the Act to hand over possession of the aforesaid land to the original land owner, i.e. respondent herein. While passing the impugned order it

was observed by the Deputy Collector, Godhra that no documentary evidence was produced with regard to ownership of the adjacent land owned by the mortgagee.

3. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Godhra dated 25.6.1991 in Fragmentation Case No. 111 of 1993 the petitioner preferred Revision Application before the learned Special Secretary (Appeals), Revenue Department,State of Gujarat, which was numbered as Revision Application No. 3 of 1991 and considering the map produced by the petitioner with regard to adjacent land the Special Secretary held that the petitioner is not owning any land adjacent to the aforesaid land in question and therefore the contention of the petitioner that the adjacent land is belonging to him is not required to be accepted and ultimately by judgment and order dated 21.10.1992 dismissed the said revision application confirming the order passed by the Deputy Collector, Godhra.

4. Being aggrieved and dissatisfied with the aforesaid judgment and order dated 21.10.1992 passed by the Deputy Collector (Appeals), Revenue Department, State of GUjarat, in Revision Application No. SRD No.3/1991 in dismissing the same and confirming the order passed by the Deputy Collector, Godhra dated 25.6.1991 the present Special Civil Application is filed under Article 227 of the Constitution of India.

5. Shri M.M. Desai, learned advocate appearing for the petitioner has submitted that both the authorities below have not properly considered and verified the facts that the petitioner is owner of the land adjacent to the land in question and therefore the question of breach of Fragmentation Act does not arise. For the aforesaid purpose he has relied upon a Map/sketch produced at Annexure 'C' to the petition. On the other hand learned Assistant Government Pleader has supported the order passed by all the authorities below. He has submitted that the aforesaid fact has also been considered by the learned Special Secretary which is borne out from the impugned order dated 21.10.1992 itself and therefore requested to dismiss the present Special Civil Application.

6. I have heard the learned advocates appearing on behalf of the parties. So far as the contention on behalf of the petitioner to the effect that he is the owner of the adjacent land and therefore there is no question of breach of Fragmentation Act is concerned and also the reliance placed by the petitioner on the

document/map/sketch which is Annexure 'C' to the petition is concerned, this Court in a petition under Article 227 of the Constitution of India cannot appreciate or reappreciate the same. It is true, that the Deputy Secretary (Appeals) in his judgment and order dated 21.10.1992 has observed that on verification it is found that the petitioner is not the owner of the adjacent land to the land in question, however on what basis the learned Deputy Secretary has come to the said finding is not clear before the Deputy Secretary. He has observed that no documentary evidence is produced with regard to showing ownership of adjacent land to the land in question. It seems that the Deputy Secretary (Appeals) while giving the aforesaid finding has relied upon the report submitted by the Collector, Panchmahals dated 18.8.1992. However from the record it seems that the petitioner is not given any opportunity to meet with the report submitted by the Collector, Panchmahals dated 18.8.1992 on the basis of which the Deputy Secretary (Appeals) has come to the aforesaid finding. If the petitioner would have been given the report of the Collector, Panchmahals on the basis of which the Deputy Collector (Appeals) had given the aforesaid finding, then the petitioner would have explained the correct position and would have produced other documentary evidence also. However, as no opportunity is given to the petitioner to meet with the report submitted by the Collector, Panchmahals the order passed by the Deputy Secretary (Appeals) is against the principles of natural justice which requires to be quashed and set aside by this Court and therefore as such the matter is required to be remanded to the learned Special Secretary. However, in view of the fact that for deciding the question whether the petitioner is owner of the adjacent land or nor some evidence is required to be adduced and therefore it will be proper to remand the matter to the Deputy Collector, Godhra Prant, Godhra only with regard to considering and ascertaining the fact whether the petitioner was/os the owner of adjacent land to land Survey No. 54/4 situate at Village Vanka, Taluka Lunawada or not. However, on the basis of the evidence if the Deputy Collector, Godhra finds that the petitioner was/is not the owner of adjacent land of Survey No. 54/4 situate in Village Vanka, Taluka Lunawada then the order passed by the Deputy Collector dated 25.6.1991 would stand confirmed and the matter. The matter is remanded to the Deputy Collector, Godhra with regard to the aforesaid limited aspect only.

7. Under the circumstances, the petition partly succeeds. The matter is remanded to the Deputy

Collector, Godhra Prant, Godhra to decide and ascertain whether the petitioner was the owner of adjacent land of land bearing Survey No. 54/4 situate at Village Vanka, Taluka Lunawada, or not with a direction that the said exercise be done after giving an opportunity of hearing to the petitioner as well as respondent herein within a period of three months from the date of receipt of writ of the order of this Court. If ultimately on evidence it is found that the petitioner was not owner of the adjacent land of the land bearing Survey No. 54/4 situate at Village Vanka,Taluka Lunawada, then the order passed by the Deputy Collector, Godhra Prant, Godhra dated 25.6.1991 in Fragmentation Case No. 111 of 1993 would stand confirmed and the Deputy Collector, Godhra Prant is directed to take appropriate action against the petitioner in accordance with law. Till the aforesaid question is decided by the Deputy Collector, status-quo qua possession with regard to land in question would be continued. Rule is made absolute to the aforesaid extent with no order as to costs.

[M.R. Shah, J.]

rmr.